No. 77-1502

In the Supreme Court of the United States

OCTOBER TERM, 1977

ROBERT CRAIG,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

ANNA R. LAVIN
EDWARD J. CALIHAN, JR.
53 West Jackson Boulevard
Chicago, Illinois 60604
Attorneys for Petitioner
ROBERT CRAIG

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

INDEX

AUTHORITIES CITED

Cases

Other Authorities

In the Supreme Court of the United States

OCTOBER TERM, 1977

NO.

ROBERT CRAIG,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To: The Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States.

Petitioner, Robert Craig, prays that a writ of certiorari issue to review the opinion of the United States Court of Appeals for the Seventh Circuit entered in this cause.

OPINION OF THE COURT BELOW

The Opinion of the United States Court of Appeals for the Seventh Circuit affirming (with one dissent) the conviction in this cause is not officially reported, but is printed in the Appendix. (App. D, pgs. App. 59-151)

JURISDICTION

The Opinion of the United States Court of Appeals was filed on December 12, 1977. (App. D, pgs. App. 59-151) A Petition for Rehearing timely made was denied on March 21, 1978. (App. E, pg. App. 152) This Petition is filed within thirty days of that date. The jurisdiction of this Court is invoked under Title 28, U.S.C. §1254(1).

QUESTIONS PRESENTED FOR REVIEW

1. Do the principles of common law in light of reason and experience dictate the recognition of a federal common law legislative privilege to be applied in federal criminal prosecutions against elected State legislators?

2. Do the Federal Rules of Evidence command that, a privilege once having been recognized, will be generally applied both criminally as well as civilly?

3. Does this case reflect a growing "pernicious" trend in the extension of federal jurisdiction beyond the intent of Congress when it enacted the various provisions of the Criminal Code, here the mail fraud statute and the federal Travel Act?

4. Were the mailings and the travel significant in, and material to, the effectuating of the scheme?

5. Were the tapes of "intercepted" conversations properly admitted as primary evidence, as "consensual", under Title 18 U.S.C. § 2511(2)(c)?

6. When a defendant defends at a criminal trial in reliance on then-extant authority as to the law governing his position, does he do so at the risk that the law will change after trial, and be applied retroactively to his disadvantage?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article IV, Section 12, Illinois State Constitution of 1970; Smith-Hurd Illinois Annotated Statutes.

". . . A member (of the General Assembly) shall not be held to answer before any other tribunal for any speech or debate, written or oral, in either house. These immunities shall apply to committee and legislative commission proceedings."

Amendment V, Constitution of the United States.

AMENDMENT V — CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI, Constitution of the United States.

AMENDMENT VI — JURY TRIAL FOR CRIMES, AND PROCEDURAL RIGHTS

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of

the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Title 18, United States Code, Section 371.

§ 371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. June 25, 1948, c. 645, 62 Stat. 101.

Title 18, United States Code, Section 1341.

§ 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail accord-

ing to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

Title 18 U.S.C., Section 1952.

§ 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Secretary of the Treasury.

Title 18, United States Code, Section 2511.

§ 2511. Interception and disclosure of wire or oral communications prohibited

(1) Except as otherwise specifically provided in this chapter any person who—

(a) willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire or oral communication;

(b) willfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when—

(i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

(ii) such device transmits communications by radio, or interferes with the transmission of such communication; or

(iii) such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or

(iv) such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or

(v) such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(c) willfully discloses, or endeavors to disclose, to any other person the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection; or

(d) willfully uses, or endeavors to use, the contents of any wire or oral communication, knowing or having reason to know that the information was ob-

tained through the interception of a wire or oral communication in violation of this subsection;

shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(2) (a) (i) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of any communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication: *Provided*, That said communication common carriers shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(ii) It shall not be unlawful under this chapter for an officer, employee, or agent of any communication common carrier to provide information, facilities, or technical assistance to an investigative or law enforcement officer who, pursuant to this chapter, is authorized to intercept a wire or oral communication.

(b) It shall not be unlawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of chapter 5 of title 47 of the United States Code, to intercept a wire communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(c) It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(d) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State or for the purpose of committing any other injurious act.

(3) Nothing contained in this chapter or in section 605 of the Communications Act of 1934 (48 Stat. 1143; 47 U.S.C. 605) shall limit the constitutional power of the President to take such measures as he deems necessary to protect the Nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities. Nor shall anything contained in this chapter be deemed to limit the constitutional power of the President to take such measures as he deems necessary to protect the United States against the overthrow of the Government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the Government. The contents of any wire or oral communication intercepted by authority of the President in the exercise of the foregoing powers may be received in evidence in any trial hearing, or other proceeding only where such interception was reasonable, and shall not be otherwise used or disclosed except as is necessary to implement that power.

Rule 501, Federal Rules of Evidence.

Rule 501. General Rule

Except as otherwise required by the Constitution of the United States or provided by Act of Congress or in rules prescribed by the Supreme Court pursuant to statutory authority, the privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law as they may be in-

terpreted by the courts of the United States in the light of reason and experience. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the privilege of a witness, person, government, State, or political subdivision thereof shall be determined in accordance with State law.

Rule 1101 (b) & (c), Federal Rules of Evidence.

Rule 1101. Applicability of Rules

* * *

(b) Proceedings generally. These rules apply generally to civil actions and proceedings, including admiralty and maritime cases, to criminal cases and proceedings, to contempt proceedings except those in which the court may act summarily, and to proceedings and cases under the Bankruptcy Act.

(c) Rule of privilege. The rule with respect to privileges applies at all stages of all actions, cases, and proceedings.

STATEMENT OF THE CASE

In December, 1974, this petitioner was charged under fourteen counts of violation of the Federal Criminal Code (mail fraud statute, 18 U.S.C. §1341, eleven counts; 18 U.S.C. §1952 travel act, 2 counts; and 18 U.S.C. §371, conspiracy to violation the mail fraud statute, one count), together with 14 other persons who were charged in various of those counts, but all under the conspiracy count. The defendants included seven former or present members of the Illinois General Assembly, all of whom went to trial save one; an employee of the Illinois Secretary of State, who went to trial; and seven members of the Ready-Mix (cement) industry, one of whom went to trial and was acquitted. Pleas of guilty were entered by those not electing trial, and they, for the most part, were government witnesses as was another legislator and various in-

dustry members (as well as two industry corporations), who received informal immunity.[1]

> "* * * Counts Two through Twelve charged the substantive crime of mail fraud in violation of 18 U.S.C. § 1341, alleging that the defendants and unindicted co-conspirators devised a scheme and artifice to 'defraud the citizens of the State of Illinois of their right to the loyal, faithful, and honest services of those defendants and co-conspirators . . . who were public officers and members of the Illinois General Assembly . . . in the performance of acts related to their official duties and functions.' Counts Two through Twelve also alleged that the defendants devised a scheme to 'defraud the State of Illinois, its citizens, its public officers, its public employees and the loyal, faithful and honest members of the Illinois General Assembly of their right to have the State's legislative business conducted honestly and impartially, and in accordance with the laws of Illinois, free from deceit, corruption, misconduct, conflict of interest, bribery and fraud, and willful concealment thereof.' Each of Counts Two through Twelve alleged that the various defendants and co-schemers caused a specific mailing to be made for the purposes of executing the scheme. Each of Counts Two through Twelve are also alleged to be overt acts of the conspiracy charged in Count One. Counts Thirteen and Fourteen charged a violation of 18 U.S.C. § 1951 [sic: 1952], alleging that the various defendants caused an individual to travel in interstate commerce with intent to promote an unlawful activity, namely bribery in violation of *Illinois Revised Statutes*, Chapter 38, § 33-1." (App. 59-60)

Prior to trial, this petitioner moved (ultimately unsuccessfully) to dismiss the indictment and to ban evidence within the scope of the Speech or Debate Clauses of the United States Constitution and of the State of Illinois. He similarly moved in a cause, review of which is requested

---

[1] The prosecutor's commitment letter, that they were in no danger of criminal proceedings, so long as they, and their officers, testified.

this date, under the title of *Markert and Craig* v. *United States*. The main opinions arose out of that case, and were made applicable to this.[2] One of the defendants, Kenneth Course (now deceased), was also charged separately for perjury before the Grand Jury in his testimony involving the subject matter of this case. Over objection that case was consolidated for trial with this cause.

Trial commenced on April 19, 1976, and concluded on June 25, 1976. During trial the decision of the United States Court of Appeals for the Seventh Circuit respecting an immunity, derived from or co-extensive with Speech or Debate, was extant. This petitioner did not testify in his own behalf on trial for fear that to do so would constitute a waiver of the immunity conferred by the first decision. Within two weeks of this trial's conclusion, after en banc hearing, that immunity was found nonexistent. On August 25, 1976, post trial motions were denied, and on October 29, 1976, this petitioner was sentenced to three years in the custody of the Attorney General, having been found guilty on all counts, and fined $5,000.00.

---

[2] "This prosecution has resulted in two previous decisions by this court. *United States* v. *Craig*, 528 F.2d 773 (1976) (*Craig I*), and the *en banc* decision on rehearing reported at 537 F.2d 957 (1976), *cert. denied sub nom. Markert* v. *United States*, 425 U.S. 973 (1976) (*Craig II*), dealt with an asserted testimonial privilege of a state legislator in the context of a federal criminal prosecution. In this appeal defendants contend that *Craig* II should be re-examined, and that the district court's refusal to dismiss the indictment on the ground that Congress did not intend the federal criminal statutes involved in this case to be applicable to state legislators should be reversed.

"We recently rejected an identical contention in *United States* v. *Craig*, ... F.2d ..... (7th Cir. 1977) (Slip opinion, No. 76-2089, December 12, 1977, pp. 54-56), a case involving the same appellant Craig as this case, but based on a different prosecution. We also reject the contention here." (App. 51)

On Appeal, the judgment of conviction was affirmed (one Judge dissenting, principally on the ground that the mailings and interstate travel was not in furtherance of the scheme alleged in the indictment), on December 12, 1977. A Petition for Rehearing was denied on March 21, 1978. (App. 152).

Facts Relevant to this Petition

The basic scheme here involved is pedestrian. It concerns defendants and co-schemers in the ready-mix cement industry who, for obvious economic reasons, wanted to haul more by truckload of their product over Illinois highways than allowed by Illinois law. It concerns the introduction into the Assembly of a bill that would allow the increased tonnage.[3] It also concerns State legislators and senators. The first group (cement businessmen) agreed to raise a sum of money to be paid to the second group (legislators and senators) to aid the passing of the bill. The second group agreed to take it, with the understanding that it was given for their support.[4] Peter V. Pappas, an employee of the Secretary of State, and expert on this type of legislation, drafted the proposed bill, and approached the second group to elicit the support desired by the first group, through Pete Pappas, the unindicted legislator, who in turn approached this petitioner on the Democratic side of the House and who also made his entries into the Senate,

---

[3] The bill itself is of little consequence. Many neighboring states were already allowing the increased weight. Nor was the sponsor of the Bill brought into the proceedings other than peripherally.

[4] Ironically, the moneys collected had to be given back because the governor vetoed the Bill. The immunized officers of one immunized corporation, and the "dealt-with" officers of another raised the money eventually paid.

through Carpentier, Pappas' close friend, and "dealt-with"[5] defendant in this cause.

The Mailings

The mailings which formed the basis for the convictions on Counts Two, Three, Four and Five were notices and agenda of the December, 1971 and January, 1972 meetings of the Motor Vehicle Laws Commission (MVLC) which were mailed at their own request to ready-mix industry representatives Connolly and McBride, two unindicted co-schemers. McBride and Connolly were present at the committee meetings and heard announced when the committee next met. Then they caused notices to be sent by mail to themselves with the same information. Moreover, the MVLC met on a regular basis and a key government witness testified that these notices are "not necessarily" received before the next meeting. (App. 133-4; 144-5)

Counts Six and Seven are duplicate letters sent to the members of the Northern Illinois Ready-Mix and Materials Association (NIRMMA). The letters simply informed the members of the association that dues would be suspended for three months because of the large reserves accumulated in NIRMMA's treasury.

During the NIRMMA annual convention in Miami Beach in February 1971, several members of the association, including Connolly, met to discuss the raising of the $50,000 bribe for the passage of the bill. Connolly suggested that the dues of the association members be suspended for a period of time to compensate partially those members contributing to the fund. On March 9, NIRMMA's board of directors moved to suspend the dues payments of members for three months to reduce the reserve monies of the association.

---

[5] Agreement to enter plea of guilty and testify in exchange for clemency recommendation.

The $50,000 fund was not derived from funds of any of NIRMMA companies. The waiver extended to all members of the association whether or not their officers had contributed to the fund. Finally, the dues suspension was not rescinded with the return of the $50,000 fund to its contributors. (App. 134-5, 146)

The mailings which are the subject of Counts Eight and Nine are fraudulent expense vouchers perpetrated on NIRMMA's treasury. When the $40 per truck assessment of the NIRMMA members proved to be insufficient to raise the $50,000 bribe fund, the $3160 deficit was made up by co-schemers Wille and Moeller. To reimburse them for this outlay, false expense vouchers were submitted by Bernard Arequilla and Morris Lauwereins to Connolly of NIRMMA. The cash generated by these vouchers was turned over to Connolly who in turn reimbursed Wille and Moeller. (App. 136, 147, 148)

The mailings which were the subject of Counts Ten and Eleven consisted of bulletins mailed by two ready-mix industry associations, Northern Illinois Ready-Mix and Materials Association (NIRMMA) and Illinois Division-Midwest Ready-Mix Concrete Association (ID-MRCA), informing their members of Senate passage of H.B. 4176 and urging them to contact the Governor to sign the bill. The bulletin also urged its members to write the governor, concerning other legislation, in no way related to the "cement" bill. (App. 137, 149, 150)

The mailing that was the subject of Count Twelve concerned 5-$100 bills addressed to the defendant Walker, and mailed in an envelope not otherwise marked. Carpentier testified that in September 1972 he received $5000 in $100 bills from Pappas. He said that a few days later he had his wife type the addresses of nine senators on plain envelopes. He further testified that using the cash supplied by Pappas, he placed a $100 bill in each of eight envelopes and five in an envelope addressed to Walker and

that he then mailed these envelopes. Walker testified at the trial and denied that he was offered or received any money in connection with the legislation. (App. 138-9)

The Travel Counts

Counts Thirteen and Fourteen are respectively a trip from Chicago to Indianapolis and back again.

The Midwest Ready-Mix Concrete Association has both Illinois and Indiana divisions. The annual convention alternates between the two states. Lauwereins, an unindicted co-schemer, traveled from Chicago to Indianapolis to meet with members of the Illinois Division-Midwest Ready-Mix Concrete Association (ID-MRCA). He testified the purpose of his trip was to inform them of the $50,000 bribe and to seek their support in raising the money. When the ID-MRCA refused, Lauwereins returned to Chicago. (App. 141)

The Electronic Recordings

This petitioner was twice recorded by the government chief-witness, who was informally immunized in exchange for his testimony on this trial, and probation on another and separate charge against him. One of the recordings was in a cocktail lounge at the Conrad Hilton on September 27, 1973, before Pete Pappas had consummated his "deal" with the government, and again, on October 23, 1973, six days after the "deal" was consummated, at the Mansion View Hotel at Springfield.

The recording machinery was government provided, government operated, and government directed, the conversation to be aimed toward the subject matter of this lawsuit, and admissions of involvement. The tapes were never sealed, and the questionability of their integrity is expansively detailed in the Petition for Certiorari of *Peter* v. *Pappas* against the United States filed this day. We will, with the Court's indulgence adopt that statement.

REASONS FOR GRANTING THE WRIT

1. THE MAJORITY DECISION OF THE COURT BELOW IN ITS EN BANC, AND FINAL DECISION, HAS BEEN EXPRESSLY DISAVOWED BY THE COURT OF APPEALS FOR THE THIRD CIRCUIT IN IN RE GRAND JURY PROCEEDINGS, 563 F. 2d 577.

2. THE DECISION OF THE COURT BELOW THAT NO PRIVILEGE EXISTS IN PRINCIPLES OF THE COMMON LAW FOR THE PROTECTION OF STATE LEGISLATORS FOR THEIR ACTS AS ELECTED REPRESENTATIVES—SO FAR AS CRIMINAL LIABILITY IS CONCERNED—IS CONTRARY TO, AND IN CONFLICT WITH, APPLICABLE DECISIONS OF THIS COURT.

3. THE DECISION HEREIN RECOGNIZING AN EVIDENTIARY PRIVILEGE, COMMENSURATE WITH LIABILITY, FINDS THE PRIVILEGE OPERATIVE CIVILLY, BUT INOPERATIVE CRIMINALLY, CONTRARY TO THE FEDERAL RULES OF EVIDENCE MAKING PRIVILEGE OPERATIVE AND APPLICABLE BOTH CIVILLY AND CRIMINALLY.

The decisions involving these points arose out of a case entitled *Markert and Craig* v. *United States of America*, Petition for Certiorari being prayed this day in a cause thus entitled. Since the reasoning in those decisions was made applicable to this cause in the Court below, we ask the Court to incorporate the expansion on the reasons made in that case as though set forth here.

4. THE DECISION BELOW EXTENDS FEDERAL JURISDICTION UNDER THE MAIL FRAUD STATUTE AND THE TRAVEL ACT BEYOND THE INTENT OF CONGRESS AND BEYOND THE INTERPRETATION OF PRIOR DECISIONS OF THIS COURT.

The vigorous dissenting opinion of Judge Swygert in this cause demonstrates that the main opinion has ignored this Court's warnings against extending the mail fraud statute (*United States* v. *Maze*, 414 U.S. 395) and the travel act (*Rewis* v. *United States*, 401 U.S. 808) into areas of criminality traditionally reserved to enforcement by the respective States (App. 127-151). That expansion and particularized dissent cannot be otherwise improved upon by us, and we would adopt it here as penetrating reasons why this Court should again make the restrictions of the use of those statutes emphatic.

Also, in his Petition for Certiorari filed this date, a co-defendant (*Jack Walker* v. *United States*) has prayed for this Court's relief under the mail fraud charges,[6] and we would adopt the reasons he advances.

Particularly Judge Swygert points out that the majority tested the mailings on a standard of whether they were "incidental to an essential part of the scheme" rather than requiring materiality to the execution of the scheme as demanded by this Court in *Maze*, (supra) 414 U.S. at 400, 401; *Kann* v. *United States*, 323 U.S. 88 and *Parr* v. *United States*, 363 U.S. 370 (App. 131).

In respect of the travel counts, Judge Swygert points, that while the primary aim of the act was at organized crime and persons residing in one state and operating in another, citing *Rewis*, 401 U.S. at 811, he concedes the

---

[6] Senator Walker was not charged under the two counts charging violations of the travel act.

statute need not be precisely limited to that primary aim. He insists, however, that the interstate activity must be more than incidental, that the interstate activity must be significant. To illustrate that here it was far short of that requirement, he states:

> "There is no showing that the bribery scheme in any way depended on this one incident of interstate travel. That the members of the ID-MCRA were meeting in Indianapolis was completely fortuitous. The assistance of ID-MRCA was not even necessary or essential to the scheme as the $50,000 bribe was raised without its help.
>
> "This one trip cannot suffice to invoke jurisdiction under the travel act. The scheme involved here was outside the ambit of congressional concern—there is nothing about the scheme which suggests any reason why state police powers needed to be supplemented by the federal government. I would therefore hold that the interstate activity was 'so minimal, incidental, and fortuitous, and so peripheral' to the scheme, *Isaacs, supra* at 1146,[7] that it was error to submit these counts to the jury." (App. 141)

5. THE COURT SHOULD REVIEW THE DECISION OF THE COURT BELOW, BECAUSE IT REFLECTS GROWING INCURSIONS ON FOURTH AMENDMENT RIGHTS, NOT AS AUTHORIZED BY STATUTE OR REGULATION.

It seems recognized that, whereever possible, federal prosecutors are retreating ever farther from the exacting—and reviewable—standards of Title III eavesdropping (Title 18 U.S.C. §2518) and resorting to "consensual" electronic surveillance, relying on Title 18 U.S.C. §2511 (2)(c).

---

[7] *United States* v. *Isaacs*, 7 Cir., 493 F.2d 1124, cert. den. 417 U.S. 976.

> "[A substantial minority of the Commission believes that these trends raise the possibility that Federal law enforcement authorities may be shifting from court-authorized to consensual surveillances for the purpose of avoiding the legal safeguards inherent in Title III. This shift from court approved to unregulated consensual surveillance is alarming.]" *Report of the National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance* (NWC Report, April 30, 1976)

In his Petition for Certiorari filed this date (*Peter V. Pappas* v. *United States*), Mr. Pappas a co-defendant in the trial of this cause has developed in depth the abuses sanctioned by the Court below in the *use* of "consensual" tapes. With this Court's indulgence, we would adopt that argument in its entirety.

But we must add another impediment to the extended—and critical—use of such evidence against this Petitioner. We submit that §2511(2)(c) does not authorize this type of evidence at all.

Section 2511 is essentially a criminal statute defining severe sanctions for its violation. Sub-section (2) thereof merely excepts certain defined actions from the operation of those criminal sanctions.

Section 2511 reads in pertinent part so far as the taping of this petitioner is concerned:

> "(1) Except as otherwise specifically provided in this chapter any person who—
>
> "(a) willfully *interprets*, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire or oral communication;
>
> "(b) willfully *uses*, endeavors to use, or procures any other person to use or endeavor to use

> any electronic, mechanical, or other device to intercept any oral communication when—
>
> • • •
>
> shall be fined not more than $10,000 or imprisoned not more than five years, or both." (our emphasis)

The Section on which the Court below relies (Section 2511(2)(c)) reads as follows:

> "(c) It shall not be unlawful under this chapter for a person acting under color of law to *intercept* a wire or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interpretation." (our emphasis).

The Court will note that subsection (1) of the statute requires specific exceptions: "Except as otherwise *specifically* provided". The Court will also note that subsection (2)(c) specifically exempts interception, but it neither exempts nor excepts *use* of that interception. Title 18, U.S.C. §2511(1)(b) defines two crimes, subparagraph (a) proscribing interception, subparagraph (b) proscribing *use* of that interception. Subsection (b) has not been excepted, specifically or non-specifically by Subsection (2)(c).

This can't be countenanced as any oversight. Under subsection (2), the Congress carefully excepted *use* under subparagraph (a) and subparagraph (b); and subparagraph (3) makes specific provision for *reception* into *evidence* in a trial under certain circumstances. No oversight of Congress can be ascribed impliedly permitting the *use* under subsection (2)(c) of the recordings allegedly made of Craig on the ground that Pete Pappas was operating "under color of law". Such *use*, except as otherwise "specifically provided," is itself a crime denounced by Section 2511.

6. SUCCESSIVE DECISIONS, THE FIRST OF WHICH ACCORDS A SUBSTANTIAL RIGHT SUBJECT TO WAIVER ON WHICH DECISION A DEFENDANT RELIES IN FORMULATING HIS DEFENSE, CANNOT BE TAKEN AWAY FROM HIM BY A SECOND DECISION THAT OBLITERATES THE RIGHT AND NULLIFIES HIS AVOIDANCE OF WAIVER WITHOUT VIOLATING DUE PROCESS.

This indictment was simultaneously returned with *United States* v. *Craig*, 528 F.2d 773.[8] That case held that the State prohibition relative to Speech or Debate to be valid, but waivable. After this initial decision and while rehearing was under consideration by an *en banc* Court, this petitioner objected to going to trial pending a final ruling on Speech or Debate. (He was a codefendant in *U.S.* v. *Craig*) Notwithstanding this objection, the government pressed for trial and the trial court acquisced.

With the law then extant that an active participation in the trial would constitute waiver of his right to rely upon Speech or Debate by taking the witness stand as Markert was declared to have done by the Seventh Circuit in speaking to the investigators and testifying before the Grand Jury, he chose to remain passive. The position of this petitioner was clearly made. (Tr. 1030-1; 1534-1543)

After the finding of "guilty", the position of the Seventh Circuit, sitting *en banc*, changed to a determination that there was no privilege, so there could be no waiver. When he made his complaint that the case was defended by him on the basis of then-existing law, the reviewing court held:

> "Craig further argues that he was denied a fair trial when he based his defense on the testimonial

---

[8] Cert. den. sub nom *Markert* v. *U.S.*, 425 U.S. 973, also see Petition for Certiorari filed this date, sub nom *Markert and Craig* v. *United States*.

> privilege enunciated in *Craig I*. To avoid a possible waiver of that privilege, Craig did not take the witness stand. The *en banc Craig* decision (*Craig II*), rendered after the verdict in the instant case, served to emasculate the defense based upon a state legislator's speech or debate immunity. Craig asserts that had he known prior to trial that it would later be determined that there was nothing he could waive under the *en banc* decision, his defense would have been more aggressive. We fail to see how Craig's defense was prejudiced by an after-trial change in the viability of the legal theory of this defense. Craig's decision to rely on the earlier panel opinion was a strategy decision which we are not inclined to review in the absence of any showing of prejudice." (App. 115)

We perceive no distinction between a defendant being put to trial without knowledge—and without basis for advice—of the state of the law upon which his conviction, if secured, will be reviewed, and the failure to advise him of the charges against him and his right to counsel.

No "strategy" decision can be determined in a vacuum. No more could the Seventh Circuit predicate the decision we seek here to review on what this Court *may* ultimately hold.

"Fundamental fairness" requires, *at the very least*, that the petitioner, Craig, should not have been forced to trial during the interim between the two conflicting decisions.

CONCLUSION

Wherefore, for the above and foregoing reasons, it is respectfully prayed that this Court will issue its Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

ANNA R. LAVIN
EDWARD J. CALIHAN, JR.
Attorneys for Petitioner

Nos. 77-1499, 77-1500, 77-1501, 77-1502 and 77-1504

In the Supreme Court of the United States

OCTOBER TERM, 1977

FRANK P. NORTH, JR., *Petitioner,*

vs.

UNITED STATES OF AMERICA,

JACK E. WALKER, *Petitioner,*

vs.

UNITED STATES OF AMERICA,

PETER V. PAPPAS, *Petitioner,*

vs.

UNITED STATES OF AMERICA,

ROBERT CRAIG, *Petitioner,*

vs.

UNITED STATES OF AMERICA,

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

SUPPLEMENT BY PETITIONERS PAPPAS AND CRAIG TO ORIGINAL PETITION FOR A WRIT OF CERTIORARI

ANNA R. LAVIN and
EDWARD J. CALIHAN, JR.
53 West Jackson Boulevard
Chicago, Illinois 60604
Attorneys for Petitioners
CRAIG AND MARKERT

PETER V. PAPPAS
33 North La Salle Street
Chicago, Illinois 60602
Attorney Pro Se

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

INDEX

AUTHORITIES CITED

Cases

United States Code

United States Constitution

Miscellaneous

In the
Supreme Court of the United States

OCTOBER TERM, 1977

Nos. 77-1499, 77-1500, 77-1501, 77-1502 and 77-1504

FRANK P. NORTH, JR., *Petitioner,*

vs.

UNITED STATES OF AMERICA,

JACK E. WALKER, *Petitioner,*

vs.

UNITED STATES OF AMERICA,

PETER V. PAPPAS, *Petitioner,*

vs.

UNITED STATES OF AMERICA,

ROBERT CRAIG, *Petitioner,*

vs.

UNITED STATES OF AMERICA,

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

SUPPLEMENT BY PETITIONERS PAPPAS AND CRAIG TO ORIGINAL PETITION FOR A WRIT OF CERTIORARI

To: *The Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States.*

Petitioner Peter V. Pappas and Petitioner Robert Craig, Defendants-Appellants in the Court below, respectfully sub-

mit this Supplement to their Petition for a Writ of Certiorari and request leave to file the same instanter pursuant to the Rules of this Court.[1]

The Petition for the Writ is still pending before this Court.

Petitioners further submit that the Petitioners have now received for the *first* time, pertinent documents pertaining to their Petition. These documents were not previously relinquished to the Petitioners by Government Attorneys although so mandated by the Trial Court during the pretrial hearings on the Motions to Suppress, and were not available at the time the Petition was filed.[2]

Petitioners first learned of the nature of the Guidelines for "interceptions" of conversations as promulgated by the Attorney General, in February of 1978, *after* En Banc hearing by the Seventh Circuit had been refused. Petitioners immediately filed motions with the Seventh Circuit seeking a hearing before the District Court as to this matter only, to determine whether the Guidelines had been, in fact, complied with. The Government resisted the Motion. The Seventh Circuit denied this relief.[3]

Thereafter, on and after March 7th, 1978, Petitioner Pappas filed written requests for documents under the Freedom of Information Act (hereinafter referred to

---

[1] Rule 24 (5) of the Rules of this Court provides that:

"Any party may file a supplemental brief at any time while a Petition for a Writ of Certiorari is pending, calling attention to *new* cases or legislation or *other intervening matter* not available at the time of his last filing." (Emphasis added)

[2] Petition 77-1501, pp. 36-9.

[3] Appendix I to Petition 77-1501, App. 5-6, and Petition 77-1501, p. 38, fn. 50.

as FOIA), 5 U. S.C. 552, seeking to determine if there had been compliance, or non-compliance, with those Guidelines. These written requests were served upon:

—The Attorney General

—The United States Attorney, Northern District of Illinois, Eastern Division

—The Chief Postal Inspector

—The Federal Bureau of Investigation, and

—The Internal Revenue Service,

all federal agencies subject to those Guidelines, and involved in the "electronic surveillances" here.

To date, there has been only either *partial compliance* or, *non-compliance* with these pertinent requests. Reproduced in the Appendix hereto, are a number of these *new* documents all being pertinent to the Questions now before this Court for Review. These new documents support the Reasons submitted in the Petitions in support of Review of those Questions.

This Supplemental Brief implements Reasons 3, 4 and 6 advanced on behalf of Review of Questions 3, 4 and 6 of Petition 77-1501. These new documents augment and further support the arguments for suppressing the tapes and arguments that the Government violated Petitioners' Constitutional Privileges and Rights.

In addition, this Supplemental Brief notes action by this Court taken after the Petition was filed.

However, a 1978 letter response from the Chief Postal Inspector discloses now, that the contents of that evidence locker, including tapes and transcripts, and "logs of events," were released by some undisclosed person, to Postal Inspector Charlton, on February 2nd, 1976. However, there is no mention as to the disposition thereof by Charlton, and thus Trail No. 3 as to Tape 101, ends with Charlton.

Tape 101 was thus, in three different places at the same time, by virtue of Trails Nos. 1, 2 and 3, and, Tape 102 was in two different places at the same time, by virtue of Trails Nos. 1 and 2.

The new documents do not aid the Record since they do not disclose any subsequent disposition of the tapes—none of the new documents created any link, any "chain of custody" linking the Original Tapes 101 and 102, to those "O" versions of tapes presented in Court in 1976, by federal trial attorneys.

The new documents however, raise pertinent unanswered questions raising further doubt as to the admissibility of the tapes presented in Court, as follows:

1. Were the *original* Tapes 101 and 102 placed in that Locker? Or were they copies?
2. Who made that deposit? D'Hooge or someone else?
3. Were Tapes 101 and 102 supplied to Attorney Winstein the "originals"? Or were they copies?
4. If copies of the *original* tapes were made, who made them and how was their integrity preserved?
5. To whom and when were *copies* of these tapes supplied?

6. Who had access to that locker?

7. Who exercised right of access to that locker between September 27, 1973 and February 2, 1976?

8. Who removed those tapes and when?

We submit that with this new evidence within this Supplement, the foundation for admission of the tapes has been eradicated, and that the Petitioners were convicted on the basis of impermissible and inadmissible proof.

F. There Was No "Prior Consent" to "Intercept".[11]

Petitioners argue in the Petition, that since there was no "aural acquisition" of the tapes, that there was no "interception" with "prior consent" within the statute granting the exemption to Fourth Amendment prohibitions.[12]

---

[11] Subsidiary Reason F to Reason 3; Petition 77-1501, p. 3 and pp. 27-29.

[12] 18 U. S. C. 2511 (2) (c) provides that:

"(c) It shall not be unlawful under this chapter for a person acting under color of law to *intercept* a wire or oral communication, where such person is a party to the communication or one of the parties to the communication has given *prior consent* to such interception." (emphasis added)

That term "intercept" is statutorily defined at *18 U. S. C. 2510* (4) as:

"(4) 'intercept' means the aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical, or other device."

To "intercept" as used in 18 U. S. C. 2511 (2) (c), means the "aural acquisition" of the "oral communication"—that is to actually hear it, to listen to the "intercepted" "oral communication" with the "prior consent" of one of the parties to that conversation.

The new documents confirm Petitioners' contentions that *in fact:*

—Although Tape 101 was made on September 27th, 1973, no one heard its contents, until an *unauthenticated copy* was heard on October 25th, 1973.[13]

—Although Tape 102 was made on October 15th, 1973, no one heard its contents, until an *unauthenticated copy* was heard on October 25th, 1973.[14]

Under the case law cited in the Petition, the tapes were inadmissible. Neither the Record nor the new documents reveal where in fact, the *original* Tapes 101 and 102 were, nor what truly happened to them. But, the new documents confirm that the conversations were not monitored as they were made, nor overheard by anyone other than the parties thereto, and the new documents confirm that Informant Pete Pappas did not give his consent for anyone to have "aural acquisition"—to listen to and hear the tapes, until October 17th, 1973, *after* the tapes were made. There was no "prior consent"—rather there was only *subsequent* consent, and the statute, 18 U. S. C. 2511(2)(c) mandates only "prior consent".[15]

REASON 4: The Tapes Were Inadmissible Because the Guidelines of the Attorney General Were Not Complied With.[16]

This same Question is being reviewed by this Court in *United States* v. *Caceres,* cert. pending, 76-1309, cert. to 545 F. 2d 1182 (9th Cir. Cal.).

---

[13] Appendix M, App. 10.

[14] Appendix M, App. 11.

[15] Petition 77-1501, p. 29 citing: *United States* v. *Bynum,* 360 F. Supp. 400 (1973 DC NY), aff'd (CA NY) 485 F. 2d 490; *Smith* v. *Wunker,* (1972, D.C. Ohio), 356 F. Supp. 44.

[16] Petition 77-1501, p. 3, pp. 36-39.

Petitioners urge that the Guidelines promulgated by the Attorney General in 1972, and in effect in 1973 when the tapes were made, were not complied with.[17]

A: The Guidelines:

The Attorney General's Guidelines specify that the "head" of the investigation, U. S. Attorney Thompson in this instance, or his "delegate", Assistant U. S. Attorney Skinner in this instance, submit the written request to the Attorney General for advance written authorization to conduct any "electronic surveillances" including the taping of "consensual conversations". There is no provision in those Guidelines for any further "redelegation" by the U. S. Attorney or his delegate.[18]

B. Requests for Authorization to Tape.

The new documents reveal, or confirm, that:

1. Neither U. S. Attorney Thompson, nor his "delegate" Assistant U.S. Attorney Skinner, submitted any written requests to the Attorney General.[19]

2. The Internal Revenue Service not only did not submit a written request, but even denied making any "electronic surveillances" of the Petitioners in 1973.[20] Now, in 1978, the IRS urges that it did not make any "independent surveillance" and

---

[17] Petition 77-1501, pp. 36-39.

[18] Appendix G to Petition 77-1501, App. 2.

[19] Skinner, in his 1976 testimony conceded that: ". . . I didn't make any written requests . . .". Trans. 473.

[20] Appendix P, App. 15-16, their 1975 Report to the Attorney General denying any "electronic surveillances."

concedes giving its "technical assistance" to the Postal Service.[21]

3. The Chief Postal Inspector admits that he submitted written requests to the Attorney General at the behest of U. S. Attorney Thompson and/or Assistant U. S. Attorney Skinner, as elaborated hereinafter.

C. Purported Compliance by the Chief Postal Inspector.

The new documents include Reports prepared and submitted by Postal Inspectors to the Chief Postal Inspectors. Their existence was never disclosed to the Petitioners, nor supplied as "Brady" material. These Reports are implemented by letters from the Chief Postal Inspector to the Attorney General.

It has been noted that the Chief Postal Inspector had been requested by the OFFICE of the U. S. Attorney, for the Northern District of Illinois, to institute "electronic surveillances" and that AUSA Skinner then drafted Marcel D'Hooge into the investigatory team he headed to aid in this project.[22]

We submit that there was no compliance with the Guidelines of the Attorney General, by the United States Attorney or his delegate, and that any action by the Chief Postal Inspector was not compliance either.

The Guidelines in providing that:

> "All Federal departments and agencies shall, except in exigent circumstances as discussed below, obtain the advance authorization of the Attorney General or any designated Assistant Attorney General before using

---

[21] Appendix O, App. 14.

[22] Petition 77-1501, p. 15.

any mechanical or electronic device to overhear, transmit, or record private conversations other than telephone conversations without the consent of all the participants. Such authorization is required before employing any such device, whether it is carried by the cooperating participant or whether it is installed on premises under the control of the participant.

Requests for authorization to monitor private conversations shall be addressed to the Attorney General, in writing, by the head of the department or agency responsible for the investigation, or his delegate, . . .

Requests for authorization will receive prompt consideration by the Attorney General or his designee. To assure adequate time for considering a request and for notifying the requesting department or agency of the appropriate decision, it is important that each request be received by the Office of the Attorney General no less than 48 hours prior to the time of the intended monitoring. It should be clearly understood that the use of consensual devices will not be authorized retrospectively.

Where a request cannot be made in compliance with the 48-hour requirement, or in exigent circumstances precluding request for authorization in advance of the monitoring—such as the imminent loss of essential evidence or a threat to the immediate safety of an agent or informant—emergency monitoring may be instituted under the authorization of the head of the responsible department or agency or other agency official or officials designated by him. The Attorney General or his designee shall be notified promptly of any such monitoring and of the specific conditions that precluded obtaining advance approval, and shall be afforded the information enumerated above that would have been given in requesting advance approval."[23]

---

[23] Appendix J to Petition 77-1501, App. 2-3.

specify procedures for:

—Advance written requests for specified persons;

—Formal authority from the Attorney General;

—Emergency authority in certain "exigent circumstances";

—Followup Report to the Attorney General of such "emergency" operations.

First—Was there proper, advance "emergency authorization" to make Tape 101? We submit that the documents prove otherwise, noting the following sequence of events:

As to Petitioner Pappas:

—At 2:04 P.M., September 26th, 1973, the Postal Inspector at Chicago telexed the Chief Postal Inspector at Washington, seeking "emergent authority" to ". . . monitor and record the conversation . . ." on September 27th, 1973, between informant Pete Pappas and Petitioner Peter V. Pappas. (Appendix R. App. 19-20).

—At 5:36 P.M., September 26th, 1973, the Chief Postal Inspector telexed *his* grant of "emergent authority" for the making of what became Tape 101. (Appendix S, App. 21).

As to Petitioner Craig:

—At 3:23 P.M., September 27th, 1973, *after* Tape 101 was made, the Postal Inspector at Chicago telexed the Chief Postal Inspector at Washington, D. C., seeking to enlarge his "emergent authority" to include petitioner Craig, and to further extend it until October 26th, 1973. (Appendix T, App. 22-23).

Here, there was no "imminent loss of essential evidence". There was no "threat to the immediate safety" of informant Pete Pappas. Thus, the "exigent circumstances"

which the Guidelines require to justify the "emergency authorization", do not exist. As to Petitioner Craig, moreover, it was *retrospective*, and prohibited by the Guidelines.

Since this investigation commenced in January, 1973 and the Grand Jury commenced its inquiries on April 1st, 1973, any purported "emergency" here, was "government-created" and not an "exigent circumstance" as specified in the Guidelines.

Thus, this "emergent authorization" granted by the Chief Postal Inspector was null and void, and Tape 101 should have been and should now be ordered suppressed. *United States* v. *Caceres*, cert. pending, 76-1309 to 545 F.2d 1182 (1976), (9th Cir.). If these true facts had been available to the Trial Court instead of withheld, this Tape would have been suppressed at that time.

Secondly, was there proper formal, advance written authorization granted by the Attorney General? We submit that the new documents prove otherwise, noting the following sequence of events:

As to Petitioner Pappas:

—On September 27th, 1973, then AAG Henry Petersen approved the formal written request of that date submitted by the Chief Postal Inspector, for the taping of the September 27th, 1973 conversation between informant Pete Pappas and Petitioner Peter V. Pappas. *The time was not noted thereon.* (Appendix U, App. 24).

—At 5:23 P.M., September 27, 1973, the Chief Postal Inspector at Washington, telexed the Postal Inspector at Chicago, notice of the said AAG approval

—over five (5) hours *after* Tape 101 was made. (Appendix V, App. 26).

As to Petitioner Craig:

—At 5:10 P.M., October 1st, 1973, an AAG, "Maroney",[24] approved the formal written request of that date submitted by the Chief Postal Inspector, seeking enlargement to add Petitioner Craig and to extend until October 26th, 1973.

Since Tape 101 was made at *noon* of September 27th, 1973, the formal approval was obviously *not* in advance, since the Chief Postal Inspector did not telex receipt of the formal approval until hours later, at 5:23 P.M. Moreover, that late Telex covered only Petitioner Peter V. Pappas, and it was not until October 1st, 1973, that Petitioner Craig was covered by the grant of authority.

The Guidelines specifically negate the validity of this *late* formal approval with:

> "It should be clearly understood that the use of consensual devices will not be authorized retrospectively".[25]

Conclusion:

Petitioners submit that:

—No *proper* advance written request for authorization to monitor and tape was made, since neither the "head" of the investigation nor his "delegate"—Messrs Thompson or Skinner—submitted a request.

—The Guidelines do not provide for "re-delegation" of the responsibilities and duties of that "head" of the in-

---

[24] Apparently AAG Petersen was not in Washington, D. C. that day.

[25] Appendix GG, App. 3, Petition 77-1501.

vestigation. Thus, the purported requests submitted by the Chief Postal Inspector did not comply with the Guidelines.

—There was no compliance by the Internal Revenue Service, since the active participation of an IRS agent was not included within the Postal Inspector's documentation; nor did the Internal Revenue Service even comply with its own Regulations.

—There was no basis for any "emergent authorization" as was granted here.

We submit that Tapes 101 and 102 should thus have been suppressed, and the Trial Court would have suppressed them if this newly disclosed evidence had been disclosed to the Trial Court during its hearings on the Motions to Suppress the Tapes.

REASON 6: The Government's Conduct Was an Abuse of the Constitutional Privileges of the Petitioners.

Petitioner Walker's Petition, 77-1500 pp. 17-18 presented the basic argument that, here, there was an abuse and violation of Due Process under the Fifth Amendment, and of the Right to Counsel under the Sixth Amendment. Petitioner Pappas augmented the Sixth Amendment argument, and Petitioners Craig and Pappas adopted the Walker Petition.

Supplementing Walker's *Due Process* point, the *withholding* of the newly disclosed documents from the Petitioners, by the Government Attorneys during the court of the trial below, was not only a direct violation of the canons governing the professional conduct of federal pros-

ecutors,[26] but was an abuse of *due process,* if not also an obstruction of justice by Government attorneys.[27] We elaborate as follows:

The Undisclosed Reports:

A review of the newly disclosed 1973 Reports by Postal Inspectors reveals that if they had been available to the petitioners during the Trial, the Reports would have re-

---

[26] American Bar Association's "Code of Professional Responsibility and Code of Judicial Conduct", adopted August 12, 1969, as amended, provides as follows:

> "EC 7-13 The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict. This special duty exists because: (1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute; (2) during trial the prosecutor is not only an advocate but he also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all; and (3) in our system of criminal justice the accused is to be given the benefit of all reasonable doubts. With respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice: *the prosecutor should make timely disclosure to the defense of available evidence, known to him, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.* Further, a prosecutor should not intentionally avoid pursuit of evidence merely because he believes it will damage the prosecutor's case or aid the accused."

and

> "EC 7-27 Because it interferes with the proper administration of justice, *a lawyer should not suppress evidence* that he or his client has legal obligation to reveal or produce. In like manner, a lawyer should not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein." (Emphasis added)

[27] Reply Brief of Petitioners, pp. 17-19.

butted the Government's Evidence and Arguments, particularly as to the admissibility of the tapes.

We have noted that USA Skinner testified in 1976 during cross-examination, as follows:

> "Oh, I recall that the postal inspectors *told* me *afterwards* that they had to submit reports to Washington . . ."; and
>
> "So, I *think* they did submit reports and as far as I know, they still exist."[28]

Skinner thus clearly stated that the Reports went directly to Washington—to the Postal Service; and he clearly implied that he, Skinner, had not seen those Reports and did not himself have them.[29]

Assistant U. S. Attorney James Holderman, who was one of the federal prosecutors below, in response to the 1978 FOIA demand, culled from the Trial files of his Office, copies of the various reports reproduced here.[30]

Thus, the Postal Inspectors did not merely *tell* United States Attorney Skinner that they had to file Reports with their superiors in Washington, D.C. They supplied copies of those Reports to Skinner, and they were in his trial files in 1976, during the trial below. Skinner's testimony obviously represented and implied the contrary.

These Reports were essential to the Defendants, and should have been released, if not as "Brady" material, then pursuant to the Trial Court Orders for pre-trial dis-

---

[28] Tr. 473, Hearings on Motions to Suppress.

[29] Petition 77-1501, pp. 37-38.

[30] Copies of Reports in the U. S. Attorney's files reproduced in the Appendix include: Appendices J, K, L, M, R, T, U and V.

covery. They would have been effectively been used as follows:

A. The Report of August 31st, 1973[31] would have refuted the Government's evidence and accusations that Petitioner Pappas had sought to improperly influence others as to the testimony they were to give to the Grand Jury and that he had sought to obstruct justice. Postal Inspector Kell reports, as to his conversations with James McBride, that:

> ". . . Mr. McBride was then interviewed and revealed that Pappas made no attempts to influence or obstruct him from testifying truthfully. The recorder was not placed on McBride's telephone and no telephone conversations were intercepted."[32]

Thus, Petitioner Pappas was deprived of the opportunity to rebut the Government's evidence and accusations.

B. The Report of October 25th, 1973 would have attacked the authenticity and credibility of Tape 101.[33]

The evidence presented upon the Trial by the Government was to the effect that once Marcel D'Hooge activated the recording device he placed upon the body of Informant Pete Pappas just before noon of September 27th, 1973, it was "live", it had "ears" and recorded all sounds heard by Informant Pete Pappas, until almost an hour later, when D'Hooge deactivated and removed the device and the reel of tape.[34]

---

[31] Appendix J, App. 1.

[32] Appendix J, App. 2-3.

[33] Appendix M, App. 10.

[34] Petition 77-1501, p. 17.

Postal Inspectors Kell and Greenan, in their Joint Report of October 25th, 1973,[35] reveal that they have heard for the first time, an unauthenticated *copy* of Tape 101, and they relate that on that date they heard specific words and statements they attribute to Petitioners Pappas and Craig.

As to Petitioner Pappas, they relate that:

> ". . . Peter V. Pappas discussed his possible actions; that he could deny receiving the money reportedly paid to him, or he could take the blame for the whole thing. . . ."

These words attributed to Petitioner Pappas are not found on the "O" version of Tape 101 presented in Court.

As to Petitioner Craig, they relate that:

> ". . . then Peter V. Pappas left. Then Robert Craig said he had heard Peter V. Pappas was going to plead guilty and tell about the ready-mix industry fund. Mr. Craig said Peter V. Pappas had denied this to him prior to Pete Pappas joining the two. Robert Craig discussed with Pete Pappas, that he, Pete Pappas, should talk to Walter Hoffelder to tell him they were aware he was going to sign a note for a $25,000 defense fund for Peter V. Pappas, and to assure him the four concerned legislators would come up with $5,000 each. . . ."[36]

These words attributed to Petitioner Craig are not found on the "O" version of Tape 101 presented in Court.

Recalling that the "O" version of Tapes 101 and 102 were represented as "raw" copies, that a "cleansed" version, the "1" version was prepared by the Government to enhance the audibility of the "O" series, and that the "3"

---

[35] Appendix M, App. 10-11.

[36] Appendix M, App. 11.

series was the excised version of the "1" series, excised pursuant to Bruton,[37] it is apparent that those words heard by the Postal Inspectors were not on any tape presented by the Government in Court.

It must be presumed that since Postal Inspectors Kell and Greenan signed that Report and submitted it to their superiors, they truthfully related what they themselves had heard on the tapes in their temporary possession. However, since what they heard is not on any of the tapes presented in Court, there is a sharp and pertinent discrepancy between the tape heard by the Postal Inspectors and the tape played in Court. Thus, the tapes presented in Court were not accurate. They were not authentic and tampered with. Presumably, those words heard by Kell and Greenan have been deleted from the tapes presented in Court.

Petitioners Pappas and Craig, deprived of this Report, were denied and precluded from the opportunity to present it in open Court to refute the authenticity and the credibility of the tapes presented by the Government to the Court and to the Jury. The absence of those words attributed to Petitioners Pappas and Craig certainly reflected adversely upon the authenticity of the version of Tape 101 presented in Court, and tended to prove tampering with the evidence.

C. The Report of October 18th, 1973 would have attacked the authenticity and credibility of Tape 102.[38]

The Government, during the course of the trial, represented that only one tape was made on October 15th, 1973,

---

[37] *Bruton* v. *United States*, 391 U.S. 123 (1968). Petition 77-1501, pp. 16-17 detailing this procedure.

[38] Appendix L, App. 7.

what became the "O" version of Tape 102—the tape made by Informant Pete Pappas using the body recorder and reel of tape installed upon him by IRS agent D'Hooge.[39]

This Report now reveals for the first time, the use of a radio transmitter simultaneously with the body recorder, and the making of two additional and undisclosed tapes.

A second tape was intercepted and received on a recorder in Room 300 of the nearby Lincoln Hotel just one block from the Mansion View Motel.

A third tape was intercepted and received on a recorder in a governmental passenger car parked nearby.

The Report further confirms that none of the three tapes made that day were listened to at that time and that the conversations were not monitored.

This Report raises obvious questions. Which of the three tapes was presented to the Court. Was the "O" version of Tape 102 presented in Court a *copy* of one of those three tapes? Or, was it a composite of two of them, or of three of them? Why did the Government fail to disclose the existence of the radio transmitter and of the two additional tapings? Where are these three tapes and was their integrity assured in any way?

Petitioners were denied the opportunity and precluded from attacking the authenticity of the "O" version of Tape 102 and to seek to determine whether or not it had or had not been tampered with.

We submit, that this nondisclosure, this deliberate withholding of pertinent evidence, denied Petitioners of Due

---

[39] Petition 77-1501, p. 15.

Process, to such an extent, that only reversal can effectively cure this abuse and violation of the Petitioners' Constitutional Privileges.

II.

REASON 5. This Court Should Now Exercise Its Discretionary Judicial Power of Supervision of Federal Criminal Justice, to Reverse the Trial Court's Action in Consolidating the Mail Fraud Indictment (74 CR 879) with a Perjury Indictment (75 CR 202).

This Supplements Reason 5 supporting review of Question 5.[40]

Attention has been called to *Jacobs,* and this Court is already aware of its Per Curiam opinion of May 1st, 1978 that "The writ of certiorari is dismissed as improvidently granted.".[41]

Thus, the ruling of the Second Circuit stands—that federal courts on appeal, have power to reverse convictions which they find to be erroneous. The Second Circuit had ordered suppression of Jacobs' testimony given before the Grand Jury, at her subsequent perjury trial.

The Seventh Circuit here is in conflict with that Second Circuit ruling, and here, the testimony given by Course before the Grand Jury should be suppressed, and in addition, the consolidation of the Mail Fraud Indictment with the Perjury Indictment was in error and this Court should now thus reverse.

---

[40] Petition 77-1501, pp. 3-4, 39-42.

[41] Petition 77-1501, noting that *United States* v. *Jacobs,* cert. granted 77-1513, was pending at the time this Petition was granted, and that *Jacobs* was virtually on all fours with this case. At p. 39.

CONCLUSION

Wherefore, for the Reasons Stated in the Petitions, in their Reply Brief and now in this Supplemental Brief, the Petitioners respectfully pray that this Court issue its Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

ANNA R. LAVIN and
EDWARD J. CALIHAN, JR.
Attorneys for Petitioners Craig and Markert.
PETER V. PAPPAS, *Petitioner Pro Se.*

APPENDIX [42]

---

[42] The Government in releasing some of the following documents, deleted some language. Where this has occurred, the word "deletion" appears in quotes.

APPENDIX J

App. 1

ORIG. TO	DISTRIBUTION	CYS. TO
✓	Chief Inspector	✓
	Operations, OMD/PAB	
	Operations, Maint. Div.	
	Finance & Admin., OMC	
	Gener' Counsel, Claims	
	Money Order Division	
	Regional Director	
	Regional Counsel	
	Postal Data Center	
	~~CI — Central Region~~ Ebert, U.S. Cts.	✓
✓	File	✓

DATE: SEP 4 1973 INITIALS: [illegible]

U.S. POSTAL SERVICE
CHIEF INSPECTOR'S DEPARTMENT

REPORT OF POSTAL INSPECTOR

TYPE OF REPORT: ☒ PRELIM ☐ FINAL ☐ SPECIAL ☐ SUPPLEMENTAL

OFFICE; CLASS; REFERENCES: CHICAGO, ILLINOIS

DATE: August 31, 1973 CASE NO.: 275-112514-F

SUBJECT:
MISCELLANEOUS (BRIBERY)
ALLEGED VIOLATORS: UNKNOWN STATE LEGISLATORS

ELECTRONIC SURVEILLANCE - REFERRAL TO CHIEF INSPECTOR, ORGANIZED CRIME DIVISION

LIMITED OFFICIAL USE

POSTAL INSPECTOR: K. D. Kell rcf

POSTAL INSPECTOR IN CHARGE: Chicago, Illinois 60607

1. Personal attention has been given this case at Chicago, IL on various dates since July 30, 1973. Basis for this investigation is the request by Mr. Samuel K. Skinner, Chief Special Investigation Unit, United States Attorney's Office, Chicago, IL, to Mr. M. J. McGee, Chief Regional Postal Inspector, Central Region, Chicago, IL, through the Inspector in Charge at Chicago, IL.

2. The investigation to date indicates that approximately 20 ready mix and cement companies in the state of Illinois contributed monies in two separate slush funds of $50,000.00 and $30,000.00, respectively, to influence and bribe various State Senators and Representatives to pass into law House Bill 4176, 1972 Session, which would provide Truck Weight Relief to these companies. House Bill 4176 related to allowing larger cement trucks to carry larger loads to and from construction sites.

3. As of this date, grants of immunity have been issued to MATERIAL SERVICE COMPANY, 300 W. Washington, Chicago, IL, and several employees of Material Service Company. Those immunized consist of several collectors for the fund, several employees of Material Service who authorized participation in the fund, and the intermediary between the legislators and Material Service, JAMES McBRIDE, a Material Service employee. McBride has been interviewed by Postal Inspectors E. W. Greeran, J. A. Charlton, and K. D. Kell on two occasions since August 16, 1973.

• • •

LIMITED OFFICIAL USE

4. On August 28, 1973 Assistant United States Attorneys Samuel Skinner and Howard Stone and Inspector K. D. Kell visited Mr. Pappas at his home at 405 Blodgett, Lake Bluff, IL. Mr. Pappas was advised of his Constitutional Rights, and was informed of the ongoing investigation. He was served with two subpoenas,

3. [redacted]

"Deletion"

6. Assistant Inspector in Charge G. E. Head, Chicago, IL was advised of the background of this matter, and a request was made upon him to authorize the interception of the telephone call. Inspector Head requested Mr. McBride's address and telephone number which were [redacted] home telephone number, "Deletion". He stated that he would secure a telephone recorder and advise the Inspector in Charge for proper authorization.

7. Upon arriving at Mr. McBride's residence in Westchester, IL, Inspector Kell and Assistant United States Attorney Stone recognized a car which was similar to the one in Mr. Pappas' driveway the night before. A telephone call was placed to Mr. McBride, and he advised that he had company and would not be able to see us at this time. Surveillance was set up on the residence, and approximately 45 minutes later Mr. Pappas left the residence and departed in a late model white Buick, Licence Number Illinois NR 3137. Mr. McBride

was then interviewed and revealed that Puppas made no attempts to influence or obstruct him from testifying truthfully. The recorder was not placed on McBride's telephone and no telephone conversations were intercepted.

8. Background information assisting in further identifying Mr. Puppas is unknown at the present time.

9. Further reports will be submitted as this investigation continues.

Karl D. Kell
Postal Inspector

APPENDIX K

App. 4

DISTRIBUTION	CYS TO
Chief Inspector	✓
Operations, OMO/PAB	
Operations, Maint. Div.	
Finance & Admin., OMC	
General Counsel, Claims	
Money Order Division	
Regional Director	
Regional Counsel	
Postal Data Center	
CI - Central Region	✓
FBaby O/C Div	X
File	

DATE: OCT 4, 1973 INIT: KDH

U.S. POSTAL SERVICE
CHIEF INSPECTOR'S DEPARTMENT

REPORT OF POSTAL INSPECTOR

TYPE OF REPORT: ☒ PRELIM ☐ FINAL ☐ SPECIAL ☐ SUPPLEMENTAL

OFFICE: CHICAGO, ILLINOIS

DATE: October 3, 1973

CASE NO: 275-11254-F

SUBJECT:
MISCELLANEOUS (BRIBERY)
ALLEGED VIOLATORS: UNKNOWN STATE LEGISLATORS

ELECTRONIC SURVEILLANCE - REFERRAL TO CHIEF INSPECTOR, ORGANIZED CRIME DIVISION

LIMITED OFFICIAL USE

POSTAL INSPECTOR: K. D. Kall ejc

POSTAL INSPECTOR IN CHARGE	Chicago, Illinois 60607

1. Personal attention has been given this case by Postal Inspectors E. W. Greenan, J. A. Charlton, and Karl D. Kall, at Chicago and Springfield, Illinois, on various dates since July 30, 1973. Basis for this investigation is the request of Mr. Samuel K. Skinner, Chief, Special Investigation Unit, United States Attorney's Office, Chicago, Illinois, to Mr. H. J. McGee, Regional Chief Inspector, Central Region, Chicago, Illinois, through the Inspector in Charge at Chicago, Illinois. Reference is invited to the preliminary reports submitted August 31, 1973, September 18, 1973 and September 28, 1973.

2. This investigation concerns an alleged conspiracy to violate the Mail Fraud Statute and other federal laws, and involves a group of corporate officials of the ready-mix concrete and supply industry bribing various Illinois State Senators and Representatives in return for the passage of favorable legislation regarding an Increased Truck Weight Bill. PETER V. PAPPAS, the alleged conduit between the legislators and the ready-mix officials, has been arranging meetings in the Chicago area with, unknown to him, cooperating Government witnesses for the purpose of influencing the testimony of these prospective witnesses.

• • •

PS Form 2029
Dec. 1970

4. On September 26, 1973, Mr. Pappas advised, through his attorney, that there was to be a meeting in Chicago on September 27 between Peter V. Pappas and himself. Peter V. Pappas was to meet Pete Pappas at Chicago's O'Hare Airport and drive him to a meeting of the Central Motor Freight Association at the Conrad Hilton in downtown Chicago.

5. Mr. Pete Pappas, consenting adult, met with Mr. Peter V. Pappas at the departure pickup ramp at United Airlines, O'Hare Airport, Chicago, Illinois, on September 27, 1973, at approximately 8:10 a.m. Mr. Pete Pappas was equipped with a body tape recorder, provided by the Internal Revenue Service, Internal Security Division, Chicago, Illinois. This recorder was activated through approximately 10:00 a.m. and was discontinued at Room 1447 of the Conrad Hilton Hotel in Chicago. At 11:40 a.m., Mr. Pappas returned to Room 1447 and was re-equipped with the same recording device. He then proceeded to the Haymarket Lounge where he met with Peter V. Pappas and Mr. Pappas returned to Room 1447 at approximately 12:25 p.m. and met with Inspector James Charlton and Marcel D'Hooge, Internal Revenue Service.

6. At 5:43 p.m., Pete Pappas returned to Room 1447 and was again equipped with the At 5:46 p.m., he left the room and returned at 7:15 p.m. As per the earlier agreement between Pappas, his attorney, and the U. S. Attorney, those present at this meeting and the contents of this meeting will remain unknown and sealed in the evidence locker at the Internal Revenue Service, 150 North Wacker, Chicago, Illinois.

7. [redacted] "DELETION"

Background information regarding Peter V. Pappas has been provided in the earlier reports.

[redacted]

[redacted]

10. The monitoring and recording of the conversations referred to in this report have all been for the purpose of gaining information considered both vital to the alleged violations of the Mail Fraud and Bribery (ITAR) Statutes, and to gather additional evidence for a possible violation of the Obstruction of Justice Statute. Authorization has been received through the Inspector in Charge, Chicago, Illinois, from the Justice Department in Washington, D. C., to monitor and record the aforementioned conversations. The equipment used in this surveillance was used only in this authorized investigation with the monitoring at the request of the United States Attorney for the Northern District of Illinois. This surveillance is considered in the best interest of law enforcement.

11. Further reports will be submitted as this investigation continues.

K. D. Kell
Postal Inspector

APPENDIX L

App. 7

DIST. TO	DISTRIBUTION	CYS TO
✓	Chief Inspector	✓
	Operations, OMD/PAB	
	Operations, Maint. Div.	
	Finance & Admin., OMC	
	General Counsel, Claims	
	Money Order Division	
	Regional Director	
	Regional Counsel	
	Postal Data Center	
	CI - Central Region	✓
	T Bixby o/c Dec	✓
	File	✓

OCT 24 1973 INITIALS W H M

U.S. POSTAL SERVICE
CHIEF INSPECTOR'S DEPARTMENT

REPORT OF POSTAL INSPECTOR

TYPE OF REPORT: ☒ PRELIM ☐ FINAL ☐ SPECIAL ☐ SUPPLEMENTAL

OFFICE: CLASS: REFERENCES: Chicago, Illinois (1st Cl)

DATE: Oct. 18, 1973

CASE NO: 275-11254-F

SUBJECT: "LIMITED OFFICIAL USE"

MISCELLANEOUS (Bribery)
ALLEGED VIOLATORS: Unknown State Legislators

"ELECTRONIC SURVEILLANCE--REFERRAL TO CHIEF INSPECTOR, ORGANIZED CRIME DIVISION"

POSTAL INSPECTOR: E. W. Greenan

POSTAL INSPECTOR IN CHARGE: Chicago, Illinois

1. Personal attention has been given this case on various dates, including October 14, 15, and 16, 1973 at Springfield, Illinois. The investigation concerns an alleged conspiracy to violate the mail fraud statute, ITAR bribery statutes, and possibly income tax statutes, by a group of corporate officials and businessmen who made cash payments to Illinois legislators for favorable consideration to legislation advantageous to the industry involved, ready-mix concrete and material supply companies. The United States Attorney, Northern District of Illinois, considered the mail fraud to be the principal offense and requested the Postal Inspection Service to conduct the investigation.

2. Request was made October 12, 1973 by ARS for authorization to use electronic surveillance equipment:

A. All electronic equipment was furnished by and controlled by Inspector Marcel DeHooge, Internal Revenue Service, who has been detailed to assist the investigation as a technical expert. During the surveillance described herein, it was used only in the authorized investigation. The sealed tapes involved remain in the custody of Mr. DeHooge, who when authorized, will make copies for use in preparation of transcriptions.

B. Copy of ARS request, submitted herewith, details the background data of this investigation, and the reason for the request; namely, to record discussions of a criminal act, pay-offs to legislators; to record discussions of a continuing conspiracy to obstruct justice by planning grand jury testimony which will continue to conceal the criminal act and will obstruct justice. On October 15, 1973 a supplemental request

Refused to D. Tapp 11/7/73

PS Form 2029 ... 1970

was made to include Peter V. Pappas, 405 East Blodgett, Lake Bluff, Illinois as a non-consenting subject of electronic surveillance.

C. The electronic equipment used in this surveillance included three assemblies:

a. [redacted] "DELETION"

c. [redacted]

D. [redacted] "DELETION"

The tapes were sealed immediately after their removal from the equipment described above. Representative Peter Pappas, 2920 32nd Court, Rock Island, Illinois, the consenting individual, is the only party to the conversations presently identified.

E. Conversations were recorded on Monday, October 15, 1973, from approximately 5:05 PM to 5:55 PM.

F. The [redacted] "DELETION" were placed on the consenting individual who went to the Mansion View Motel, 529 South Fourth Street, Springfield, Illinois to meet with other persons in a room not yet identified. The recording through the [redacted] to the [redacted] was made in "DELETION" [redacted] parked and/or being driven in the area of the motel. The Tandberg recorder was receiving in Room 300, Lincoln Tower Motel, 520 South Second Street, Springfield, Illinois (adjacent to the Mansion View Motel). Postal Inspector J. H. Rustad and Inspector Marcel DeHooge attended the vehicle recording, checking mechanical features to determine an apparent successful recording operation. Postal Inspector E. W. Greenan attended the [redacted] "DELETION" in Room 300, Lincoln Towers Motel. The recordings were not monitored by listening to them, nor have they been heard by anyone. Information therein cannot be summarized or evaluated at this time.

3. [redacted] "DELETION" [redacted]

E. W. Greenan

E. W. Greenan
Postal Inspector

APPENDIX M

App. 10

DISTRIBUTION	KEY TO
Chief Inspector	✓
Operations, OMD/PAB	
Operations, Mgmt. Div.	
Finance & Admin., OMC	
General Counsel, Claims	
Money Order Division	
Regional Director	
Regional Counsel	
Postal Data Center	
CI - Central Region	✓
Baltimore Div.	✓
File	

OCT 31 1973 INITIALS: Wh

U. S. POSTAL SERVICE
CHIEF INSPECTOR'S DEPARTMENT

REPORT OF POSTAL INSPECTOR

TYPE OF REPORT: ☒ PRELIM ☐ FINAL ☐ SPECIAL ☐ SUPPLEMENTAL

OFFICE: CLASS: REFERENCES: Chicago, Illinois (1st Cl)

DATE: Oct. 25, 1973

CASE NO: 275-11254-F

SUBJECT: "LIMITED OFFICIAL USE"

MISCELLANEOUS (Bribery)
ALLEGED VIOLATORS: Unknown State Legislators
"ELECTRONIC SURVEILLANCE--REFERRAL TO CHIEF INSPECTOR, ORGANIZED CRIME DIVISION"

POSTAL INSPECTOR: Karl Kell
E. W. Greenan

Referred to D.J. Tapp 11/2/73

POSTAL INSPECTOR IN CHARGE: Chicago, Illinois

1. Reference is invited to preliminary reports dated October 3, 1973 and October 18, 1973 in which uses of electronic surveillance were detailed. At that time no summary or evaluation could be furnished; plea-bargaining with the consenting individual was incomplete and no monitoring or overhearing of the tapes was done. The investigation concerns an alleged conspiracy to violate the mail fraud statute, IIAR bribery statutes, and possibly income tax statutes, by a group of corporate officials and businessmen who made cash payments to Illinois legislators for favorable consideration to legislation advantageous to the industry involved, ready-mix concrete and material supply companies. The United States Attorney, Northern District of Illinois, considered the mail fraud to be the principal offense and requested the Postal Inspection Service to conduct the investigation.

2. Representative PETE PAPPAS (not Peter as referred to in report of October 18, 1973) has now finalized an agreement with James Thompson, United States Attorney, Northern District of Illinois, Chicago, Illinois. The previously sealed tapes are summarized as follows:

A. Recording on September 27, 1973 between 8:10 and 10:00 AM of a conversation between Pete Pappas and PETER V. PAPPAS during a ride between O'Hare Airport and the Conrad Hilton Hotel in downtown Chicago, Illinois. During this conversation, Peter V. Pappas told of being asked to resign from his position in the Office of The Secretary of State. Peter V. Pappas discussed that he needed money for legal fees. He also arranged a luncheon meeting with Pete Pappas and ROBERT CRAIG, an Illinois representative.

PS Form 2029
Dec. 1970

B. Recording on September 27, 1973 between 11:40 AM and 12:25 PM of a conversation between Pete Pappas, Peter V. Pappas and Robert Craig in the Haymarket Lounge of the Conrad Hilton Hotel, Chicago, Illinois. Peter V. Pappas discussed his possible actions; that he could deny receiving the money reportedly paid to him, or he could take the blame for the whole thing. Peter V. Pappas told them that his wife, Mary, had been subpenaed. There was an unrelated discussion of Mrs. Robert Craig's health; then Peter V. Pappas left. Then Robert Craig said he had heard Peter V. Pappas was going to plead guilty and tell about the ready-mix industry fund. Mr. Craig said Peter V. Pappas had denied this to him prior to Pete Pappas joining the two. Robert Craig discussed with Pete Pappas, that he, Pete Pappas, should talk to Walter Hoffelder to tell him they were aware he was going to sign a note for a $25,000 defense fund for Peter V. Pappas, and to assure him the four concerned legislators would come up with $5,000 each.

C. Recording on September 27, 1973 between 5:46 PM to 7:15 PM of a conversation between Pete Pappas and Walter P. Hoffelder in the International Bar Room of the Conrad Hilton in Chicago; Mr. Hoffelder was told the legislators were going to help Peter V. Pappas in his defense fund. Mr. Hoffelder said he would take Peter V. Pappas to "his" bank the next day and arrange for him to get the money he needed.

"DELETION"

D. Recording on October 15, 1973 from approximately 5:05 PM to 5:55 PM of a conversation between [redacted] and [redacted] in the area of the Mansion View Motel, Springfield, Illinois, and subsequent conversation between Course, Pappas, and Peter V. Pappas in a room at the Mansion View Motel, Springfield, Illinois. Initially Course commented that he made a mistake and gave Peter V. Pappas a list of legislators to whom he had given money. There was a discussion of 5, 5, 5, and 5 totalling 20, not 30. Then Peter V. Pappas joined them and they went to Peter V. Pappas' room. There was a general discussion of the ready-mix bill, and Peter V. Pappas said there never was $30,000.

"DELETION"

3. The brief summaries above are from a partial playback of copies of the tapes, and interview of Pete Pappas. To expedite their use in debriefing Pete Pappas, the copies of the tapes were returned to the office of the United States Attorney, NDI, Chicago, Illinois for transcribing. A more detailed summary utilizing the tape transcripts will be included in a future report.

4. Background information has been furnished on Peter V. Pappas, Pete Pappas and Robert Craig. Kenneth W. Course resides at [redacted], and is a senator representing the 17th District in the Illinois legislature. Walter P. Hoffelder is a former state senator, and a former chairman of the Motor Vehicle Laws Commission of the Illinois Legislature; he resides at [redacted] No other background information is known.

"DELETION"

"DELETION"

5. The monitoring and recording of the conversations described above have furnished information considered vital in development of evidence of the alleged violations of the Mail Fraud and Bribery (ITAR) Statutes, and also evidence of possible violations of Subornation of Perjury and Obstruction of Justice Statutes. Authorization was received through the Inspector In Charge, Chicago Division, from the Department Of Justice, Washington, D.C., to record the above conversations. The equipment used in the surveillance was used only in the authorized investigation; the recordings were at the request of the United States Attorney, Northern District of Illinois, Chicago. The surveillances were considered to be in the best interest of law enforcement.

Karl Kell

Karl Kell

E. W. Greenan

E. W. Greenan
Postal Inspectors

APPENDIX N

App. 13

Address any reply to: P.O. Box 1193, Chicago, Ill. 60690
Department of the Treasury

District Director
Internal Revenue Service

Date: JUN 2 1978 | In reply refer to: A:DO

Mr. Peter V. Pappas
33 N. LaSalle Street - Suite 2412
Chicago, Illinois 60602

Dear Mr. Pappas:

This is in response to your May 11, 1978 Freedom of Information Act request. In that letter you ask for copies of various documents prepared by Internal Revenue Service Inspector Marcel D'Hooge.

A search of the Chicago District revealed no such records within our control. However, since the documents requested would, if they exist, be controlled by the Office of the Regional Inspector, a copy of your request has been forwarded for their response.

I hope you find this action to be of assistance to you. If you have any questions regarding this matter, you may contact Mr. Vince Killen at 886-4804.

Sincerely,

for Charles F. Miriani
District Director

APPENDIX O

App. 14

Internal Revenue Service

Department of the Treasury

Assistant
Commissioner
(Inspection)

Washington, DC 20224

Mr. Peter V. Pappas
Suite 2412
33 North LaSalle Street
Chicago, IL 60602

JUL - 5 1978

Dear Mr. Pappas:

This is in response to your request for information under the Freedom of Information Act.

Inspection records show that the Internal Revenue Service did not conduct an independent investigation of you in 1973 as you suggest in your letter. We did, however, provide electronic surveillance equipment and technical assistance to the U.S. Postal Service. The resulting original tapes, copies and transcriptions, together with logs of the events were sealed and placed in an evidence locker at the suggestion of the U.S. Attorney.

Subsequently on February 2, 1976, these documents were turned over to Postal Inspector J. A. Charlton.

The Internal Revenue Service does not have in its custody any of the documents you request.

Very truly yours,

for W. A. Bates

(emphasis added)

APPENDIX P

Washington, DC 20224

Eo 6

Mr. John C. Keeney
Acting Assistant Attorney General
Criminal Division
Department of Justice
Washington, D.C. 20530

Attn: Thomas J. McTiernan
Chief, Fraud Section

Person to Contact:
Mr. Philip Litman
Telephone Number:
184-6732
Refer Reply to:
CP:I:T
Date:
APR 10 1975

CRIMINAL DIVISION
APR 14 1975
Received Fraud Section

Dear Mr. Keeney:

In Re: CAPUZI, Louis F.
COURSE, Kenneth W.
CRAIG, Robert
HANAHAN, Thomas J.
MARKERT, Louis
NORTH, Frank P.
SHEAHEN, Francis
WALKER, Jack E.
WALL, John F.
PAPPAS, Peter V.

RECEIVED
APR 14 1975
CRIMINAL DIVISION

On March 31, 1975 you requested that the Department of Justice be advised whether the Internal Revenue Service had conducted any electronic surveillance (lawful or unlawful) of the subject-named individual(s) or his (their) premises. You further requested that this reply include any surveillances where one of the parties may have consented to the surveillance.

The electronic surveillance files of the Internal Revenue Service are indexed under the names of individuals who were the subjects of electronic surveillance, attempted electronic surveillance, or on whom leads were obtained as a result of electronic surveillance. Only in those instances where a surveillance was attempted or conducted at premises where the identity of the individuals surveilled could not be ascertained are our files indexed by address or other geographical location.

177-012

Our files disclose that none of the individuals named above were the subject of any electronic surveillance conducted by the Intelligence Division. No conversations in which any of the above participated were intercepted, overheard, or recorded through electronic surveillance conducted by the Intelligence Division.

P.A.U.
Criminal Div.
Fraud Sec.

Mr. John C. Keeney

To our knowledge no state or local authorities have conducted any electronic surveillance on this (these) individual(s), nor was any suggestion made by us to initiate one.

We have also searched our files for any electronic surveillance conducted at the addresses set forth in your request. The results of this search were negative.

The Director, Internal Security Division, Inspection Service, advises that the Inspection Service has conducted no surveillance on the individuals named in your request and they have no indication of any surveillance conducted at the addresses set forth in your inquiry.

If any additional information concerning this matter is required, please contact this office.

Sincerely yours,

John J. Olszewski
Director, Intelligence Division

APPENDIX Q

App. 17

IKJ

CHIEF POSTAL INSPECTOR
Washington, D.C. 20260

April 14, 1975

CRIMINAL DIVISION
APR 16 1975
Received Fraud Section

RECEIVED
APR 16 1975
CRIMINAL DIVISION

Mr. John C. Keeney
Acting Assistant Attorney General
Criminal Division
Department of Justice
Washington, D. C. 20530

Your reference: Electronic Surveillance
United States v. Craig, et al.,
No. 74 CR 877 and 879
JCK:TJM:IKJ:kat
36-23-641

Dear Mr. Keeney:

Your letter dated March 31, 1975, and related attachment, copies attached, requested information concerning possible use of electronic surveillance by the Postal Inspection Service.

A thorough search of our records disclosed no electronic surveillance was conducted on Louis F. Capuzi, 710 N. Rockwell, Chicago, Illinois, Thomas J. Hanahan, 2012 W. Grandview, McHenry, Illinois, Francis Sheahen, 1740 Ravine Terrace, Highland Park, Illinois and John F. Wall, 2874 Hillock Avenue, Chicago, Illinois, or any of the above addresses.

Oral or telephone conversations of the following defendants were monitored and recorded with the prior consent of one of the parties to the conversations during the Inspection Service investigation which led to the indictments:

Kenneth W. Course	3413 Armitage Avenue Chicago, Illinois
Robert Craig	1628 Franklin Danville, Illinois
Frank P. North	2520 Harlem Boulevard Rockville, Illinois
Jack E. Walker	18018 Arcadia Avenue Lansing, Illinois
Peter V. Pappas	405 Blodgett Road Lake Bluff, Illinois

36-23-641
DEPARTMENT OF JUSTICE
APR 15 1975
RECORD
CRIMINAL DIV.

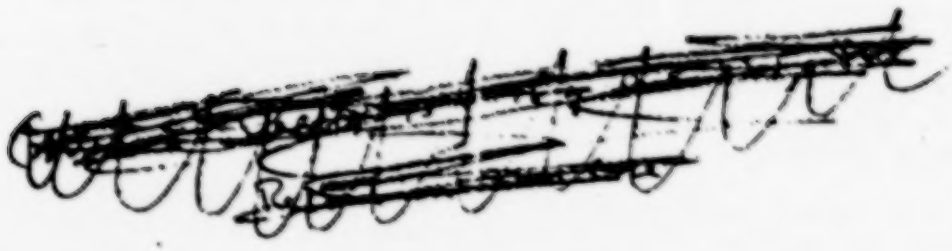
All of the consensual type monitoring was conducted in accordance with existing Attorney General guidelines covering this type of electronic surveillance. Assistant U. S. Attorneys, Samuel K. Skinner, James F. Holderman and John Gleason, United States Attorney's Office, Chicago, Illinois, are aware of the consensual electronic surveillance conducted by the Inspection Service.

Records relating to the electronic surveillance are in the possession of and available through Postal Inspector James A. Charlton, Chicago, Illinois 60607, who is one of the investigating Inspectors assigned to the case.

Sincerely,

William J. Cotter
Chief Inspector

Attachments



APPENDIX R

USPS ISHQ

WU ISCS 1-021033A269 09/26/73
TJX USPS ISCHA CGO
SUSPECTED DUPLICATE
01 CHICAGO, IL 09-26-73
TWX 7108220166 USPS ISHQ
CHIEF POSTAL INSPECTOR, WASHINGTON, D. C.

'73 SEP 26 PM 2:01

FROM INSPECTOR IN CHARGE, CHICAGO, IL
TO CHIEF POSTAL INSPECTOR, WASHINGTON, D. C.
TO REGIONAL CHIEF INSPECTOR, CENTRAL, CHICAGO, IL
01 S-26-73
SUBJ: CHICAGO, IL CASE NO. 275-11254-F
THIS INVESTIGATION CONCERNS AN ALLEGED CONSPIRACY TO VIOLATE THE MAIL FRAUD STATUTE AND OTHER FEDERAL LAWS, AND INVOLVES A GROUP OF CORPORATE OFFICIALS OF THE READY MIX CONCRETE AND SUPPLY INDUSTRY BRIBING VARIOUS ILLINOIS STATE SENATORS AND REPRESENTATIVES IN RETURN FOR FAVORABLE CONSIDERATION AND PASSAGE OF LEGISLATION REGARDING AN INCREASED TRUCK WEIGHT BILL. PETER V. PAPPAS, 405 EAST BLODGETT AVE., LAKE BLUFF, IL, AN ATTORNEY WITH OFFICES AT 33 NORTH LA SALLE ST., CHICAGO, IL, SSN: 329-18-2512, A FORMER EMPLOYEE OF THE OFFICE OF THE SECRETARY OF STATE, FOR THE STATE OF ILLINOIS, THE ALLEGED CONDUIT BETWEEN THE LEGISLATORS AND THE READY MIX OFFICIALS, HAS BEEN ARRANGING MEETINGS IN THE CHICAGO AREA WITH, UNKNOWN TO HIM, COOPERATING GOVERNMENT WITNESSES FOR THE PURPOSE OF INFLUENCING THE TESTIMONY OF THESE PROSPECTIVE WITNESSES. MR. PETE

PAPPAS, 2920 32ND ST, CT., MOLINE, IL, A STATE REPRESENTATIVE, NO RELATION TO PETER V. PAPPAS, ALSO A SUBJECT OF THIS INVESTIGATION, HAS CONSENTED TO THE MONITORING AND RECORDING OF CONVERSATIONS BETWEEN HIMSELF AND PETER V. PAPPAS WHICH WILL TAKE PLACE AT A MEETING IN THE CHICAGO AREA ON 9-27-73. AUTHORIZATION IS REQUESTED TO MONITOR AND RECORD THE CONVERSATION USING A TRANSMITTER, RECEIVER, AND RECORDER. THE MONITORING IS FOR THE PURPOSE OF GAINING INFORMATI VITAL TO THE INVESTIGATION AND POSSIBLE EVIDENCE OF A VIOLATION OF THE OBSTRUCTION OF JUSTICE STATUTE. THE MONITORING IS AT THE REQUEST OF THE UNITED STATES ATTORNEY, NORTHERN DISTRICT OF ILLINOIS, CHICAGO IL, AND IS CONSIDERED IN THE BEST INTEREST OF LAW ENFORCEMENT. IT IS REQUESTED THAT AN AUTHORIZATION BE GRANTED FOR A PERIOD, INCLUDING SEPTEMBER 26,1973, THROUGH OCTOBER 26,1973, IN THE EVENT OF CONTINUED OR POSTPONED MEETING.

END, MS

Cys to: Fraud Rm 3775
Mr Carter Rm 3573

1303 EST

USPS ISHQ

APPENDIX S

App. 21

'73 SEP 26 PM 5:36

USPS ISCR CGO

USPS ISHQ
FM CHIEF POSTAL INSPECTOR
TO REG CHIEF INSP CENTRAL REGION
TO INSP IN CHARGE CHICAGO DIVISION
BT
015 9-26-73 530P EDT

CASE NO. 275-11254-F CHICAGO, ILL

RE: YOUR TWX 01 9-26-73, EMERGENT APPROVAL FOR THE USE OF ELECTRONIC SURVEILLANCE EQUIPMENT TO RECORD, WITH THE CONSENT OF A PARTY, CONVERSATIONS BETWEEN PETE PAPPAS AND PETER V. PAPPAS IN THE CHICAGO AREA IS GRANTED FOR THE PERIOD 9-26-73 TO 9-29-73. FORMAL REQUEST WILL BE MADE TO THE JUSTICE DEPT. FOR AN ADDITIONAL 30 DAYS. YOU WILL BE ADVISE WHEN FORMAL APPROVAL IS RECEIVED FROM DEPT. OF JUSTICE.
END:LO
BT

Cys to: Fraud Rm 3775
O. C. Rm 3770

NNNN
USPS ISCR CGO

APPENDIX T

USPS ISHQ

FM INSPEC^
USPS ISHQ

USPS ISCHA CGO

FM INSPECTOR IN CHARGE, CHICAGO, IL
TO CHIEF POSTAL INSPECTOR, WASHINGTON, DC
ATTENTION: ORGANIZED CRIME DIVISION
02 09-27-73 2:15 CST
CASE NO 275-11254-F

'73 SEP 27 PM 3:23

REFERENCE IS INVITED TO TWX OF 9-26-73 REQUESTING EMERGENT APPROVAL FOR THE USE OF ELECTRONIC SURVEILLANCE EQUIPMENT TO RECORD, WITH THE CONSENT OF ONE PARTY, CONVERSATIONS BETWEEN PETE PAPPAS AND PETER V. PAPPAS IN THE CHICAGO AREA BEGINNING 9-27-73. EMERGENT AUTHORITY HAS BEEN GIVEN THROUGH THE INSPECTOR IN CHARGE, CHICAGO, IL, TO ENLARGE THE AUTHORIZATION OF THIS SURVEILLANCE TO INCLUDE [redacted] "DELETION" [redacted] "DELETION" AS AN ADDITIONAL NON-CONSENTING PARTY, AND ANY OTHER PERSON OR PERSONS WHOSE NAMES ARE NOW UNKNOWN WHO MAY BE PRESENT AT ANY FUTURE MEETINGS. THIS WAS NECESSITATED BY A SURPRISE APPEARANCE OF [redacted] AT A MEETING ON THIS DATE. AUTHORIZATION IS REQUESTED TO MONITOR [redacted]

AND RECORD THESE CONVERSATIONS USING A TRANSMITTER RECEIVER AND RECORDER. THE MONITORING IS FOR THE PURPOSE OF GAINING INFORMATION VITAL TO THE INVESTIGATION AND POSSIBLE EVIDENCE OF THE VIOLATIONS OF THE OBSTRUCTION OF JUSTICE STATUTE. THIS MONITORING IS AT THE REQUEST OF THE UNITED STATES ATTORNEY, NORTHERN DISTRICT OF ILLINOIS, CHICAGO, ILLINOIS AND IS CONSIDERED IN THE BEST INTEREST OF LAW ENFORCEMENT. IT IS REQUESTED THAT THIS AUTHORIZATION BE GRANTED FOR A PERIOD, INCLUDING 9-27-73 THROUGH AND INCLUDING 10-26-73, IN THE EVENT OF CONTINUED OR POSTPONED MEETINGS. THE NAMES OF ANY OTHER PERSONS PRESENT AT ANY FUTURE MEETINGS WILL BE FURNISHED IN THE APPROPRIATE REPORT.

CC TO: FRAUD BR RM 3775
MR. CARTER RM 3573
ORGANIZED CRIME RM 3765

END, JW

USPS ISHQ

APPENDIX U

Seller 1-3

CHIEF POSTAL INSPECTOR
Washington, DC 20260

September 27, 1973

Honorable Elliot L. Richardson
Attorney General
Department of Justice
Washington, D. C. 20530

Reference: The memorandum from your office dated October 16, 1972: "Monitoring Private Conversations With The Consent Of a Party."

Dear Mr. Attorney General:

Emergent approval has been granted for the use of electronic surveillance equipment to monitor and record non-telephone conversations in an investigation being conducted by Postal Inspectors at Chicago, Illinois, for the period September 26, 1973 to September 29, 1973. The investigation concerns an alleged conspiracy to violate the Mail Fraud Statute, and involves a group of corporate officials bribing legislators to influence the passage of favorable legislation. Possible defendants in the case have been arranging meetings at Chicago for the purpose of influencing the testimony of prospective witnesses. A meeting was to be held at Chicago between State Representative Pete Pappas and Peter V. Pappas, the non-consenting party (no relation to Representative Pete Pappas).

Additional information requested by your memorandum:

1. Monitoring is desired to obtain evidence in compliance with the desires of the United States Attorney's Office, and to protect the safety of the consenting party. A transmitter and microphone will be concealed on the informant and a receiver and recorder will be located nearby. The equipment is expected to be used in an as yet undetermined location in Chicago, to cover an expected meeting on or after September 26, 1973. Approval is requested for an additional 30 days to monitor and record conversations for the period September 30 through October 30, 1973.

2. Representative Pete Pappas will meet with Peter V. Pappas for the purpose of gaining information vital to the investigation and possible evidence of a violation of the Obstruction of Justice Statute.

3. It is our considered judgement that monitoring is warranted in the interest of effective law enforcement.

Sincerely,

William J. Cotter
Chief Inspector

approval recommended.
9/27

APPROVED:

Henry E. Petersen

Date: 9/27/73

APPENDIX V

73 SEP 27 PM 5:23

USPS ISCHB CGO

USPS ISHQ

010 WASHINGTON D C SEPT SEPT 27 1973 515PM
FM CHIEF INSPECTOR U. S. POSTAL SERVICE WASH D C
TO REGIONAL CHIEF INSPECTOR CENTRAL REGION
INSPECTOR IN CHARGE CHICAGO DIVISION

CASE NO. #275-11254-FCHICAGO, IL
AUTHORIZATION HAS BEEN RECEIVED FROM THE JUSTICE DEPART. TO MONITOR AND RECORD CONVERSATIONS BETWEEN PETE PAPPAS AND PETER V. PAPAS FROM SEPT. 30 THROUGH OCT. 30, 1973.
END CC

USPS ISCHB CGO

USPS ISHQ

CFYS TO FRAUD MI 3775
O.C. MI 3771

APPENDIX W

Collect 10/2/73

ASSISTANT POSTMASTER GENERAL
INSPECTION SERVICE
Washington, DC 20260

10/1/73
27S-11254 F

Honorable Elliot L. Richardson
Attorney General
Department of Justice
Washington, D.C. 20530

Reference: The memorandum from your office dated October 16, 1973: "Monitoring Private Conversations With The Consent Of A Party."

Dear Mr. Attorney General:

Reference is made to my letter dated September 27, 1973, copy attached. Due to a surprise appearance by Robert Craig at a monitored meeting between Pete Pappas and Peter V. Pappas on September 27, 1973, emergent approval has been given through the Inspector in Charge, Chicago, Illinois, to enlarge the authorization of this surveillance to include Robert Craig as as additional non-consenting party. All other circumstances outlined in the September 27, 1973 letter are similar.

Advance approval is requested to monitor and record conversations between the consenting party, Pete Pappas and the non-consenting parties, Peter V. Pappas and Robert Craig, during the period October 2, 1973 through October 26, 1973, in the event of continued or postponed meetings.

It is our considered judgment that monitoring is warranted in the interest of effective law enforcement.

Sincerely,

William J. Cotter
Chief Inspector

approved 10/1/73
5 10 PM - (A.A.G. being absent from D.C.)
K. O'Mara

F.1M 10/4/73